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DE RUEHDG #1350/01 1112000
ZNR UUUUU ZZH
P 212000Z APR 06
FM AMEMBASSY SANTO DOMINGO
TO RUEHC/SECSTATE WASHDC PRIORITY 4480
INFO RUEHZA/WHA CENTRAL AMERICAN COLLECTIVE PRIORITY
RUEHKG/AMEMBASSY KINGSTON PRIORITY 2557
RUEHME/AMEMBASSY MEXICO PRIORITY 1048
RUEHPU/AMEMBASSY PORT AU PRINCE PRIORITY 4211
RUEAWJA/DEPT OF JUSTICE WASHDC PRIORITY
RUCOWCV/CUSTOMS CARIBBEAN ATTACHE MIAMI FL PRIORITY
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DEPARTMENT FOR WHA/CAR SEARBY, L/LEI FOR TORRES AND MUELLER
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E.O. 12958: N/A
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SUBJECT: DOMINICAN REPUBLIC: EXTRADITION TREATY ASSAILED BY
NARCO-ATTORNEYS AND TABLOID PRESS

¶1. Over the last two weeks, sensationalist tabloid "El Nacional" has attacked the United States for purported violations of the 1910 U.S.-Dominican Extradition Treaty. According to sources cited by "El Nacional," U.S. extradition requests for individuals whose alleged crimes are punishable by sentences exceeding 30 years violate an explicit treaty provision capping sentences for returned fugitives.

¶2. A simple reading of the treaty quickly reveals this to be a lie; the treaty contains no sentencing language. Accordingly, one must inquire into "El Nacional's" motives for persisting with this story.

Captured by Narco-Attorneys?

¶3. On Monday, April 10, "El Nacional" published an article quoting legal "experts" who reiterated that the United States was violating the bilateral extradition treaty. The attorneys quoted in this piece were Domingo Rojas Ninas, High Commissioner for the National Commission on Human Rights and former attorney for narco-trafficker Franklyn Franco and Felix Damian Olivares, principal attorney for extradited narco-trafficker Quirino Paulino Castillo.

¶4. Why the reliance on "experts" linked to narco-trafficking, especially Olivares, who was repeatedly cited by that paper throughout 2005 as an expert critic in extradition matters? Some Embassy contacts in various Dominican media and legal circles suggest an unholy alliance that permits extradition attorneys to fight for their clients publicly while the paper's editor is provided ammunition for his personal leftist/nationalist agenda. A Rojas quote from 2005 suggests nationalism is equally in play, or at least part of a narco-attorney media strategy: "que cuando un dominicano es acusado en el extranjero de cometer un crimen o delito y se encontrase en la Republica Dominicana puede ser juzgado por los tribunales dominicanos". ("When a Dominican is accused overseas of committing a crime and is discovered in the Dominican Republic he can be judged by Dominican tribunals.")

¶5. While this is technically true, Rojas should already know that common practice in international law is to prioritize conflicts in jurisdiction based on an aggregate balance of factors, including: treaty requirements, locus of crime, nationality of perpetrator, nationality of victim, convenience to parties and witnesses, and the availability of evidence. (See, e.g., The Princeton Principles on Universal Jurisdiction (2001)). When the United States desires prosecution for a Dominican citizen who committed a crime within U.S. territorial boundaries, the balance clearly favors the United States.

A Constant Critic

¶6. Detached observation should prepare the reader for attacks such as these from the pages of "El Nacional." The paper's editorial policy, set by an "old guard" leftist radicalized by the U.S. intervention of 1965, is one of vehement anti-Americanism, exemplified by past pieces rejecting CAFTA-DR ("more thorns than flowers"), U.S. military presence in the Dominican Republic (suggesting New Horizons exercise is U.S. attempt to built "secret" military base), the Iraq war ("genocidal"), and the extradition of Paulino ("a defeat for the government and for justice"), while supporting both Cuba and Venezuela (criticizing major party leaders for speaking with "anti-Venezuelan conspirators" and "enemies of Venezuela").

The Fallout

¶7. What, then, is the impact of this criticism for the future of U.S. extradition in the Dominican Republic? The Embassy notes that none of our law enforcement contacts, whether in specialized agencies or in the Office of the Attorney General, have suggested that this is a "real" issue for the Dominican government.

¶8. This fact, combined with repeated, spirited defense of the Treaty by Acting Attorney General Rodolfo Espineira, leads the Embassy to conclude that there is little threat of negotiated plea agreements being foisted on U.S. prosecutors as a precondition to a fugitive's extradition, at least in the near term.

¶9. On April 20 presidential legal advisor Cesar Pina Torribio was enticed by journalists into commenting that the extradition treaty should be amended specifically to bar capital punishment of Dominican citizens, in conformity with the Dominican Constitution -- but, he added, some of the current proposals in Congress for amendment of the Penal Code call for capital punishment for offenses such as rape of a minor.

Future Legal Challenges and Potential Difficulties

¶10. While the treaty is clearly not implicated and there is little danger of a significant change in law or practice in the near term, the Embassy would still highlight legal challenges to extradition that may arise in the coming years.

30 year maximum

¶11. In regard to maximum sentences, the Dominican Constitution, while silent on actual terms, may be interpreted as prohibiting sentences in excess of 30 years (the maximum set under Article 7 of the Penal Code) based on language contained in Article VIII, section 1, barring sentences that impose death, torture, and "any other penalty or vexatious procedure or that would implicate the loss or diminution of physical integrity or health of the individual." The logical argument to make based on that

interpretation would be that extradition of subjects facing terms in excess of 30 years would violate the Dominican Constitution.

¶12. It doesn't appear that there is much support for this argument, as domestic legislation (Law 489-69, modified by Law 278-89) simply establishes that the Presidential authorization for extradition should contain a statement that authorities should not impose a sentence above the Dominican 30 year maximum. The United States does not interpret the language as mandatory. And it does not always appear -- it was not contained in the presidential authorization of the recently returned fugitive Juan Rincon Concepcion

Death Penalty

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¶13. What was present in that authorization, however, was a boilerplate language explicitly attempting to bar application of the death penalty ("bajo ninguna circunstancia se le impondra la pena de muerte" -- "in no circumstances will the death penalty be imposed on the subject"). As the Dominican Constitution prohibits imposition of the death penalty and current Dominican practice attempts to exclude its imposition for those extradited, the Embassy predicts future difficulties for extradition requests for crimes possibly punishable by death sentences upon conviction. The Embassy maintains this position even as polling conducted by the Gallup organization and local daily "Hoy" demonstrates that 67 percent of Dominicans favor imposition of the death penalty for convicted child rapists.

Conclusion

¶14. While the immediate fallout of "El Nacional,s" biased attacks against extradition and the bilateral treaty are certain to have no meaningful impact, significant underlying issues still exist in cases involving the death penalty. Support for Dominican fugitives, the vast majority of whom are involved in narco-trafficking, is slight, and without a significant change in public support there will be little pressure to link extradition to sentencing guarantees.

¶15. Drafted by Michael Garuckis.

¶16. This piece and others can be consulted at our SIPRNET web site (<http://www.state.sgov.gov/p/wha/santodomingo>) along with extensive other material.
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